1 2	BILL LOCKYER, Attorney General of the State of California JONATHAN D. COOPER, State Bar No. 141461		
3	Deputy Attorney General California Department of Justice		
4	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-5547		
5	Facsimile: (415) 703-5480 Attorneys for Complainant		
7 8 9	BEFORE THE CALIFORNIA BOARD OF OCCUPATIONAL THERAPY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10	In the Matter of the Accusation Against:   Case No. OA2005-91		
11 12	MICHAEL EDWARD CLARK 1151 El Centro Napa, California, 94558  ACCUSATION		
13 14	Occupational Therapy Assistant Certificate Number OTA 1245  Respondent		
15 16	Complainant alleges:		
17	PARTIES		
18	1. Heather Martin (Complainant) brings this Accusation solely in her official		
19	capacity as the Executive Officer of the California Board of Occupational Therapy, Department		
20	of Consumer Affairs.		
21	2. On or about July 1, 3003, the California Board of Occupational Therapy,		
22	Department of Consumer Affairs, issued Occupational Therapy Assistant Certificate Number		
23	OTA 1245 to Michael Edward Clark (Respondent). The Certificate was in full force and effect at		
24	all times relevant to the charges brought herein and expired on November 30, 2007.		
25	<u>JURISDICTION</u>		
26	3. This Accusation is brought before the California Board of Occupational		
27	Therapy (Board), Department of Consumer Affairs, under the authority of the following laws.		
28	All section references are to the Business and Professions Code unless otherwise indicated.		

1	4. Section 2570.26 of the Code provides, in pertinent part:
2	"(a) The board may, after a hearing, deny, suspend, revoke, or place on
. 3	probation a license, certificate, inactive license, inactive certificate, or limited permit."
4	"(b) As used in this chapter, "license" includes a license, certificate, limited permit, or any other authorization to engage in practice regulated by this
5	chapter."
6	" »,
7	5. Section <b>2570.30</b> provides:
8	"The board shall retain jurisdiction to proceed with any investigation, action or disciplinary proceeding against a license, or to render a decision
9	suspending or revoking a license, regardless of the expiration, lapse, or suspension of the license by operation of law, by order or decision of the board or a court of
10	law, or by the voluntary surrender of a license by the licensee."
11	STATUTORY AND REGULATORY PROVISIONS
12	6. Section <b>2570.3</b> of the Code provides, in pertinent part:
13	"(a) No person shall practice occupational therapy or hold himself or
14	herself out as an occupational therapist or as being able to practice occupational therapy, or to render occupational therapy services in this state unless he or she is licensed as an occupational therapist under the provisions of this chapter "
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16	"(i) "Cunomician of an acquinational thereny againstant" many that the
17	"(j) "Supervision of an occupational therapy assistant" means that the responsible occupational therapist shall at all times be responsible for all occupational therapy services provided to the client. The occupational therapist
18	who is responsible for appropriate supervision shall formulate and document in
19	each client's record, with his or her signature, the goals and plan for that client, and shall make sure that the occupational therapy assistant assigned to that client
20	functions under appropriate supervision. As part of the responsible occupational therapist's appropriate supervision, he or she shall conduct at least weekly review
21	and inspection of all aspects of occupational therapy services by the occupational therapy assistant."
22	"(1) The supervising occupational therapist has the continuing
23	responsibility to follow the progress of each patient, provide direct care to the patient, and to assure that the occupational therapy assistant does not function
24	autonomously."
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26	7. Section <b>2570.13(b)</b> provides:
27	"(b) A certified occupational therapy assistant may practice only under the supervision of an occupational therapist who is authorized to practice occupational therapy in this state."

1	8. Section 2570.18 provides, in pertinent part:				
2	"(a) On and after January 1, 2003, a person shall not represent to the				
3					
4	authorized to practice occupational therapy under this chapter."				
5	"(b) Unless licensed to practice as an occupational therapist under this chapter, a person may not use the professional abbreviations "O.T.," "O.T.R.," or				
6	"O.T.R./L.," or "Occupational Therapist," or "Occupational Therapist Registered," or any other words, letters, or symbols with the intent to represent that the person				
7	practices or is authorized to practice occupational therapy."				
. 8	""				
9	9. Section <b>2570.28</b> of the Code provides, in pertinent part, that the Board				
-	may deny or discipline a licensee for any of the following:				
10	"(a) Unprofessional conduct"				
11	« »				
12	(4/ NT/ 1 /				
13	"(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any regulation adopted pursuant to this chapter."				
14					
15					
16	"(g) Impersonating a licensed practitioner, or permitting or allowing another unlicensed person to use a license."				
17	"(h) Committing any fraudulent, dishonest, or corrupt act that is				
18	substantially related to the qualifications, functions, or duties of a licensee."				
19	10. California Code of Regulations, Title 16, section 4170, states, in pertinent				
20	part:				
21	"A violation of any ethical standard of practice constitutes grounds for				
22	disciplinary action. Every person who holds a license, certificate or limited permit issued by the board shall comply with the following ethical standards of practice:"				
23	" "				
24	"(d) Occupational therapy practitioners shall perform occupational therapy				
25	services only when they are qualified by education, training, and experience to do so."				
26	"(1) Occupational therapy practitioners shall hold the appropriate				
27	credentials for the services they provide."				
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1	"(f) Occupational therapy practitioners shall provide accurate information about occupational therapy services."			
2	(1) Occupational therapy practitioners shall accurately represent their credentials, qualifications, education, experience, training, and competence.			
4	" "···			
.5	"(3) Occupational therapy practitioners shall refrain from using or			
6	participating in the use of any form of communication that contains false, fraudulent, deceptive statements or claims."			
7	11. California Code of Regulations, Title 16, section 4181, states, in pertinent			
8	part:			
9	"(a) Appropriate supervision of an occupational therapy assistant includes, at a minimum:"			
10 11	"(1) The weekly review and inspection of all aspects of occupational therapy services by the supervising occupational therapist."			
12	"(2) Documentation of the supervision process shall include			
13	documentation of the client's care or co-signature by the supervising occupational			
14 15	"(3) The supervising occupational therapist shall be readily available in person or by telecommunication to the occupational therapy assistant at all times while the occupational therapy assistant is providing occupational therapy			
16	services. The supervising occupational therapist shall provide periodic on-site			
17	"(b) The supervising occupational therapist shall at all times be			
18 19	responsible for all occupational therapy services provided by an occupational therapy assistant, a limited permit holder, a student or an aide. The supervising			
20	occupational therapist has continuing responsibility to follow the progress of each client, provide direct care to the client, and assure that the occupational therapy assistant, limited permit holder, student or aide do not function autonomously."			
21	" "			
22	"(d) Occupational therapy assistants may supervise:			
23	(1) Level I occupational therapy students;			
24	(2) Level I and Level II occupational therapy assistant students; and			
25	(3) Aides providing non-client related tasks."			
26	"(e) The supervising occupational therapist shall determine that the			
27	occupational therapy assistant or limited permit holder possesses a current certificate or permit to practice occupational therapy prior to allowing the person to provide occupational therapy services."			

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### **FACTUAL SUMMARY**

- 12. From 2001 until approximately April, 2006, Respondent owned and operated a business called Valley Rehab and Ergonomics, Inc. (hereinafter "Valley Rehab") in Napa, California. Respondent is the sole owner of the corporation and is the corporation's Chief Executive Officer, Secretary and Chief Financial Officer as well as the sole member of the corporation's board of directors. While it was in operation, Valley Rehab provided occupational therapy services to patients.
- 13. Respondent is not licensed as an occupational therapist in California. He is a certified occupational therapy assistant.
- 14. While operating Valley Rehab, Respondent employed and supervised licensed occupational therapists in the performance of occupational therapy on patients of Valley Rehab.
- 15. While operating Valley Rehab, Respondent personally performed occupational therapy on patients including, but not limited to, patient evaluation, treatment, assessment and implementation of treatment progression. Respondent was not supervised by any occupational therapist in the performance of this work.
- 16. While operating Valley Rehab, Respondent represented to patients, employees and others that he was an occupational therapist.
- 17. While operating Valley Rehab, Respondent billed patients and their insurance carriers, including Medicare, for the above-described occupational therapy services performed by Respondent. In submitting this billing, Respondent used provider information of licensed occupational therapists that worked at Valley Rehab.

# FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

18. Respondent is subject to disciplinary action under section 2570.28 of the Code in that he acted unprofessionally, as set forth above in paragraphs 12 through 17.

### SECOND CAUSE FOR DISCIPLINE 1 2 (Impersonation of Licensed Occupational Therapist) 19. 3 Respondent is subject to disciplinary action under sections 2570.3, 2570.18, 2570.28(c) and 2570.28(g) of the Code and under California Code of Regulations, Title 4 5 16, section 4170, subsections (d) and (f), in that he impersonated a licensed occupational therapist, as set forth above in paragraphs 12 through 17. 6 7 THIRD CAUSE FOR DISCIPLINE 8 (Fraudulent, Dishonest or Corrupt Act) 9 20. Respondent is subject to disciplinary action under sections 2570.28 (c) and 10 2570.28 (h) of the Code and under California Code of Regulations, Title 16, section 4170(f), in 11 that he engaged in fraudulent, dishonest or corrupt acts, as set forth above in paragraphs 12 through 17. 12 13 **FOURTH CAUSE FOR DISCIPLINE** 14 (Unsupervised Practice by Occupational Therapy Assistant) 15 21. Respondent is subject to disciplinary action under sections 2570.13(b) and 16 2570.28(c) of the Code and under California Code of Regulations, Title 16, sections 4170(d) and 17 4181, in that he engaged in the practice of occupational therapy without appropriate supervision by a licensed occupational therapist, as set forth above in paragraphs 12 through 17. 18 19 FIFTH CAUSE FOR DISCIPLINE 20 (Unlawful Supervision of Licensed Occupational Therapists) 21 22. Respondent is subject to disciplinary action under section 2570.28(c) of 22 the Code and under California Code of Regulations, Title 16, section 4181(d), in that he 23 unlawfully supervised the work performed by licensed occupational therapists, as set forth above 24 in paragraphs 12 through 17. 2.5 /// 26 ///

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#### **PRAYER**

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WHEREFORE, Complainant requests that a hearing be held on the matters herein lleged, and that following the hearing, the Board of Occupational Therapy issue a decision:

- 23. Revoking or suspending Occupational Therapy Assistant Certificate er 1245, issued to Michael Edward Clark;
- 24. Ordering Michael Edward Clark to pay the Board of Occupational Therapy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
  - 25. Taking such other and further action as deemed necessary and proper.

DATED: <u>[XOMPEV 17, WD</u>]

Heather Martin

**Executive Officer** 

California Board of Occupational Therapy

Department of Consumer Affairs

State of California

Complainant